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GAU 1645 Seq

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Fox et al.		
Serial No.:	08/866,354	Group Art Unit No.:	1645
Filed:	May 30, 1997	Examiner:	Robert C. Hayes, Ph.D.
For:	Neurotrophic Factor Receptors		
Docket No.:	A-401B		

RESPONSE TO OFFICE ACTION

REQUEST FOR RECONSIDERATION OF RESTRICTION REQUIREMENT

The Assistant Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

In response to the Office Action dated March 6, 1998 (Paper Number 5), Applicants respectfully traverse and request reconsideration of the restriction requirement in view of the reasons set forth below.

In the Office Action, the Examiner divided the claims into the following groups:

Group I	Claims 1-12, 35-36 & 51-52	proteins and compositions thereof
Group II	Claims 13-26, 28-34, 53-58 & 60	nucleic acid sequences encoding the proteins, vectors, host cells and methods of production
Group III	Claims 37-40 & 61	methods of treatment using the proteins
Group IV	Claims 41-45 & 62-63	antibodies to the proteins
Group V	Claims 27, 46-48, 59 & 64	encapsulated cells expressing the proteins
Group VI	Claims 49-50 & 65-66	assay devices and methods for detecting the proteins

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, on the date appearing below.

April 6, 1998
Date

J. Craft
Signature

Group VII Claims 67-69	methods for determining whether a ligand activates a receptor tyrosine kinase

Traverse of the restriction requirement includes the issue as to whether the subject matter of the claim groupings outlined by the Examiner are "independent and distinct" as required by 325 U.S.C. §121. The Examiner states that the Groups are "distinct" in that the claimed proteins, nucleic acid sequences and antibodies are physically different compounds prepared by different processes.

As provided in the MPEP, §803, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the examiner if restriction is not required. The basis of the present application are proteins and their encoding nucleic acids, neither of which were known in the art. The novel proteins are encoded by the novel nucleic acid sequences, and the proteins may be used in the claimed compositions, methods of treatment, the production of antibodies and assay methods. The specification fully describes this dependent relationship. In fact, the claims are interrelated as evidenced by interdependencies of the claims themselves, for example nucleic acid claim 13, treatment claims 37-40, and antibody claim 41.

Any thorough search by the PTO will be based upon both the amino acid and nucleic sequences presented by Applicants. As a result, for examination purposes there is no distinction between these entities. There is only the arbitrary classification of compositions. Moreover, because the examination of any of the entities will involve this same search, there is no serious burden on the examiner if restriction is not required. Divergent fields need not be searched in the course of examination.

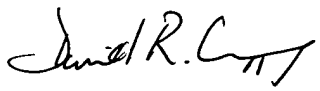
Applicants, therefore, submit that because the subject matter of the Examiner's groupings have been shown to be interrelated, the requirement should be withdrawn. In addition, Applicants submit that because the subject matter as claimed in the Groups relates to the basic compounds described in Group I, the Examiner's search will involve the same art and fields of search even if a single group of claims is separately prosecuted. The search of any of the Groups will result in a coextensive search of the classifications in today's USPTO. Thus, the Examiner's time and search parameters would not be so burdensome as to call for a restriction requirement.

In view of these facts and because restriction is a discretionary procedural matter with the PTO, Applicants respectfully submit that the restriction requirement may properly be withdrawn. At the minimum, Groups I, III, IV and V should be rejoined as all are based upon the same proteins.

Favorable consideration of this request in light of the above remarks is requested.

To complete this request, as provided by 37 CFR 1.143, Applicants provisionally elect with traverse Claims 13-26, 28-34, 53-58 and 60 (Group II) for further prosecution.

Respectfully submitted,



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